Chapter 1
Contract Management

Contract Management means any activity related to contracting for client services, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing, and post contract follow up.

Purpose

The purpose of contract management is to:

- Ensure delivery of timely, quality services to agency clients.
- Ensure the contractor is in compliance with the terms and conditions of the contract.
- Ensure accountability of public funds in accordance with applicable laws, regulations, and contract provisions.
- Promote and protect the public interest.

The specific nature and extent of contract management varies from contract to contract, and should be tailored to the type of contract and contractor involved. Factors which may influence the approach to contract management include: the complexity and sensitivity of the services to be provided; the level of funding; number and types of funding sources; subrecipient versus vendor status for federally funded contracts; experience of the contracting parties; and contractor prior performance.

Responsibilities

The responsibility for contract management may be assigned to a specific individual or carried out by a team that has the necessary program and fiscal expertise and authority to assess service quality and ensure compliance with contract provisions. Performance expectations of contract managers should be clearly defined. Responsibilities of the contract manager could include:

- Understanding the contract, including the specific contract obligations and performance indicators by which performance will be monitored.
- Identifying the extent and source of other public funding the contractor is using to fund services provided by the contract.
- Ensuring the contractor has a clear understanding of how the contract will be managed and monitored.
- Providing the contractor with guidance, technical assistance, and training, as needed, to promote effective contract performance.
- Using a risk assessment approach when contracting out services and selecting contractors, and to determine the extent of monitoring and auditing of the contractor and individual contracts.

- Monitoring the contractor's activities, as necessary, to ensure quality service delivery, and that all funding is used for authorized purposes. This includes maintaining contract documentation.
- Collaborating with other state agencies relying on the same contractor for client service delivery to ensure there is clarity of program service delivery requirements and clear expectations for the overall funding of the contractor's operation and the handling of specific funding sources.
- Reviewing invoices and verifying that delivery of services is rendered.
- Resolving issues or problems that arise during the contract.
- Measuring and tracking agency and client satisfaction with contractor performance.
- Sharing contractor performance information with other state agencies.
- Complying with federal and state rules and regulations pertaining to contract management.
- Documenting the contracting process (see Appendix G for examples of contract checklists).
- Continually assessing the state agency methodology for contract management to assure it remains applicable and functional.

State Agency Staff Qualifications

Contract managers are responsible for managing client service contracts from the beginning to the end of the contract cycle. The individuals or combination of individuals managing these contracts should have the knowledge, skills, and abilities to carry out their responsibilities.

To properly administer contracts, expertise is needed in contract law, contract drafting, and contract management and monitoring. It is also helpful if contracting staff have program experience in the program for which they are drafting or monitoring contracts. Whenever possible, staff should have the appropriate experience and training to properly manage client service contracts.

Contract Manager "Don'ts"

Among the multiplicity of responsibilities contract managers have, they need to be mindful of the following:

- Don't instruct the contractor to begin work before the contract is executed and approved.
- Don't change the description, scope of work, period of performance, or costs of the contract without processing a written amendment.
- Don't direct the contractor to do work that is not specifically described in the contract.
- Don't sign any contractor's contract form without legal review.
- Don't authorize payment to the contractor for any work not performed satisfactorily.
- Don't pay for the same or similar services for the same client more than once.

Ethics

All contract managers are responsible for agency compliance with the state's ethics code, Chapter 42.52 Revised Code of Washington (RCW) and Title 292 Washington Administrative Code (WAC).

State employees contracting on behalf of the state are to maintain strict ethical standards and take caution to avoid any real or perceived conflict of interest. The ethics law is designed to protect state employees from conflicts of interest or from engaging in activities where their interest or loyalties are divided or may be questioned. Employees should familiarize themselves with the applicable statutes and all agency policies whenever they are involved in any contract on behalf of the state. These regulations apply to both current and former state employees, but generally not to contractors. Confidentiality should be addressed in contract provisions, along with other ethical issues. Contract managers should consult with their agency contracting staff or their agency Assistant Attorney General for further information and clarification.

RCW 42.52.030, .040, and .050 contain specific ethics prohibitions that can affect current state employees. Below is a brief synopsis of those prohibitions. Refer to the statute directly for further information. State employees may **not**:

- Have a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity in which a state employee has an interest.
- Assist other persons in transactions with the state, except in the course of official duties or incident to official duties, when a matter has been within his/her official responsibility within the preceding two years.
- Disclose confidential information for personal benefit or gain, or for the benefit or gain of others.
- Accept employment that might reasonably require the disclosure of confidential information obtained through state employment.
- Use one's official state position to obtain special privileges or exemptions or to grant special privileges to others.
- Accept outside employment or compensation, if circumstances would lead a reasonable person to believe it is a reward for performance or non-performance of state duties.
- Accept any gift, if circumstances create the impression that one's vote, judgment or action could be affected, or that it is a reward for the performance or nonperformance of an official duty, or if the item is of a value that exceeds statutory limits.

NOTE: These prohibitions regarding ethics apply to any type of contracting by the state.

Separate ethics boards are established for the legislative, judicial and executive branches of government. They have authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, impose penalties, and recommend suspension and dismissal of violators.

Contract managers are encouraged to periodically review their contracting processes to ensure all employees who manage contracts are familiar with and are in compliance with the state's ethics code.

Contract managers are encouraged to consult their agency policies and procedures, their agency Assistant Attorney General or the Executive Secretary of the Executive Ethics Board for interpretation of code requirements or the propriety of proposed specific contracts. The Executive Director of the Executive Ethics Board can be reached at (360) 664-0871 or at www.wa.gov/ethics.

Collaboration/Communication

Collaboration and communication between contract managers and contractors is key to a successful contract. Having a good professional relationship with contractors allows for better decision making, better problem solving, and better contract management in general. Contract managers should be mindful of ethical considerations, while maintaining working relationships with contractors. Collaboration and communication among contract managers of state agencies may also help ensure a successful contract.

Communication can occur using many tools, such as the telephone, email, regular mail, and meetings, but should occur throughout the contract process. Contract managers may want to provide training, technical assistance, written documents, and other resources to assist contractors in successfully meeting the terms and conditions of the contract and in providing quality services to clients.

Collaboration, coordination, and communication are also beneficial between state agencies using the same contractors. Discussions could include topics such as funding issues, avoiding duplicate payments across state agencies, and collaborating on monitoring or auditing visits. One tool that state agency staff may use to improve collaboration and coordination is the Client Service Contracts Database (CSCD) developed by OFM in conjunction with state agencies. This database pulls basic client service contracts data from state agencies into a centralized location. State agency staff may access the CSCD to view other agencies contract information and to see if other agencies are using the same contractors.

The CSCD can be found on the OFM website, and is available to state agency staff through the statewide intranet at http://cscd.ofm.wa.gov/cscd/User/Login.asp.

Risk Assessment Approach to Contract Management

Risk assessment is the process of evaluating exposure to harm or loss that could arise from some activity associated with the client service contract. It consists of identifying and classifying risks based on certain characteristics, and measuring and evaluating the consequences of these risks.

Contract managers should conduct a risk assessment throughout the contracting process, including when:

- Deciding to contract out services and selecting contractors,
- Determining the level of monitoring and/or auditing needed, in targeting efforts to areas of greater risk,
- Prioritizing contracts for monitoring and/or auditing purposes, and
- Targeting oversight efforts to areas of greater risk.

The risk-based approach allows contract managers to better focus their oversight efforts on higher risk contracts. A risk assessment evaluates risk factors in order to determine contract language to include in the contract to mitigate risks, and how much monitoring and/or auditing should be done. Examples of risk factors that may be considered are: the state agency's experience with the contractor, contractor systems and controls, changes in the contractor's operations or personnel, and the history of the client service program or service.

Risk factors can be broken out into two broad categories: 1) risks associated with client service programs, and 2) risks associated with client service contractors.

Risks associated with client service programs: Examples of factors that may be considered in assessing risk include:

> **Program history** – Is it a new or long established program or service? Have any significant changes occurred?
>
> **Total funding** – Does this contract represent a significant portion of the total program funding?
>
> **Complexity** – Are program requirements simple or complex?
>
> **Client health and safety** – How vulnerable are the clients that the program serves?
>
> **Responsibility for key decisions** – Does the state agency, federal government, or the contractor make decisions about eligibility and amount or type of service to be provided to a client? For federal funds, is the contractor a vendor or subrecipient?
>
> **Federal risk assessment –** Has the U.S. General Accounting Office and U.S. Office of Management and Budget identified the program as being high risk?
>
> **Payment method –** What type of payment method is used (e.g., cost reimbursement, fee for service, performance based)? What experience does the state agency have with the method?
>
> **Competition –** Are contracts awarded on a competitive basis, which includes detailed evaluations of the service proposal, costs, and contractor qualifications, or are they awarded on a noncompetitive basis?

Monitoring methods – Are the existing methods of monitoring effective for this program? Do these monitoring methods effectively mitigate the other types of possible risks?

Client Choice – Is the client choosing the contractor, as required by some federal programs?

Risks associated with client service contractors: Examples of factors that may be considered in assessing risk include:

Total funding that the contractor receives from the agency – Is the amount of funding small or large? Does the contractor have many or few contracts with the state?

Multiple funding sources – Is the contractor receiving funding from several sources for similar services? Are multiple funding sources involved and to what extent?

Collaboration – Has the contractor promoted collaboration on service delivery and contract expectations between itself and all of its funding partners?

Length of time in business – Has the contractor been in business for several years or is it a start-up client service provider?

Experience and past performance – Does the contractor have contracts for similar services with other governmental entities? How extensive is the contractor's experience with the state for this type of service? What is their performance history? Have there been changes in key staff?

Accreditation/licensure – Are contractors subject to accreditation or licensure requirements?

Financial health and practices – Is the contractor's financial condition good or poor? Does the contractor demonstrate sound financial practices? Is the contractor's financial record keeping system adequate for the number and complexity of funding sources being managed? Does the contractor do business with related parties and, if yes, does this business affect agency funds?

Current and prior audit experience – Has the contractor had weaknesses in internal control over federal or state programs?

Oversight exercised by funding agencies - Have there been monitoring or other reviews by any funding agency that could indicate the degree of risk? Is the contractor proposing to operate under a waiver from customary program and financial management requirements?

Board of directors – If the contractor is a nonprofit organization, does the board take an active role in directing the organization, establishing management policies and procedures, and monitoring the organization's financial and programmatic performance? Is the board comprised of individuals who are unrelated? Do employees or ex-employees of the organization serve as board members?

Subcontracting – Does the contractor subcontract key activities? Does the contractor have an effective monitoring function to oversee these subcontracts?

Organizational changes – Has there been frequent turnover of contractor management, senior accounting staff or key program personnel? Has the contractor taken on any new services within the last 12 months? Has the contractor experienced a recent rapid growth or downsizing? Has the contractor experienced reorganization within the last 12 months? Has the contractor changed major subcontractors recently?

Management structure – Is the organization centralized or decentralized? How much control does the organization have over decentralized functions?

Legal actions – Have any lawsuits been filed against the contractor within the last 12 months?

Based on the results of the risk assessment, contract managers may decide whether to contract out services, which contractor to select, or the scope, frequency, and methods of monitoring and/or auditing to use to ensure sufficient oversight, given the risks involved. Risk assessment results may also be used to devise more stringent controls and tighter contract language, when appropriate, to adequately monitor and/or audit the use of public funds.

Risk management strategies include transferring risk to the contractor, minimizing or mitigating the risk, eliminating the risk, or sharing the risk with the contractor. Contract managers may:

- Add clauses to the contract to address specific risk factors.
- Require contractors to provide proof of insurance.
- Develop and implement effective monitoring plans and contractor reporting requirements.
- Link payments to deliverables/performance measures.

It is also important to note that the risk inherent in a contractor's potential performance is dynamic. The risk assessment should be updated periodically to promote fair consideration of the contractor as a client service provider.

Examples of risk assessment tools currently used by agencies can be found in Appendix A.